a public street solely for private use, the court in the principal case follows the weight of authority. *Tilly* v. *Mitchell & Lewis Co.*, 121 Wis. 1, 98 N. W. 969; *Bybee* v. *State*, 94 Ind. 443. But see *Rothschild & Co.* v. *Chicago*, 227 Ill. 205, 81 N. E. 407. See also 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1176. It is submitted, however, that the overhead bridge relieves street traffic *pro tanto* and so is not an obstruction but is rather a legitimate highway use. *Leitchfield Mercantile Co.* v. *Commonwealth*, 143 Ky. 163, 136 S. W. 639; *Kellogg* v. *Cincinnati Traction Co.*, 80 Ohio St. 331, 88 N. E. 882. As regards vacation of streets, power to authorize the same is customarily vested by the legislature in some municipal body. *Lowden* v. *Starr*, 171 Iowa, 528, 154 N. W. 331; *Curtiss* v. *Charlevoix Golf Ass'n*, 178 Mich. 50, 144 N. W. 818. This power, while discretionary with public officials, cannot be exercised arbitrarily. See *People ex rel. Brooklyn Cooperage Co.* v. *Gokey*, 177 App. Div. 61, 163 N. Y. Supp. 693; *City of Goldfield* v. *Golden Cycle Mining Co.*, 60 Colo. 220, 152 Pac. 896; 3 ABBOTT, MUNICIPAL CORPORATIONS, §§ 939, 940. Furthermore, the vacation of a street must be primarily for public, not for private benefit. *Sherwood* v. *City of Paterson*, 88 N. J. L. 456, 94 Atl. 311. See *Stevens* v. *City of Dublin*, 169 S. W. 188 (Tex. Civ. App.); TIEDEMAN, MUNICIPAL CORPORATIONS, § 308. In the principal case there was no evidence of benefit to the public through vacation of the street; the sole benefit accrued to the refining company. In fact, upon passage of the ordinance, the company fenced off the street. It seems, therefore, that the court properly declared this ordinance void.

PRINCIPAL AND SURETY — DEFENSES OF SURETY — CREDITOR'S FAILURE TO RECORD MORTGAGE. — The defendant, payee of a note secured by a chattel mortgage, indorsed the note and assigned the mortgage to the plaintiff. The mortgage was never recorded. Consequently, the maker's trustee in bankruptcy took the chattel free of the mortgage lien. The plaintiff sued the defendant as indorser of the note. *Held*, that he is discharged. *Auto Brokerage Co., Inc.* v. *Morris & Smith Auto Co., Inc.*, 174 N. Y. Supp. 188 (Sup. Ct.).

A creditor generally owes the surety no duty of affirmative action against the principal. The surety has no defense because the creditor's mere inactivity caused a loss of the latter's security, as by failing to foreclose a mortgage or suffering a judgment lien to expire. *Sheldon* v. *Williams*, 11 Neb. 272; *Kindt's Appeal*, 102 Pa. 441. This is because the surety can himself pay the debt and preserve the security. But where the creditor fails to do something which is peculiarly in his power to do, as recording a mortgage or other security, the surety should be discharged. *Bennett* v. *Taylor*, 43 Tex. Civ. App. 30, 93 S. W. 704; *Sullivan* v. *State*, 59 Ark. 47, 26 S. W. 194; *Burr* v. *Boyer*, 2 Neb. 265. *Contra*, *Philbrooks* v. *McEwen*, 29 Ind. 347; *Westchester Mortgage Co.* v. *McIntire*, 174 N. Y. App. Div. 525. In the present case, however, it does not appear that the defendant indorsed for the maker's accommodation. If his indorsement to the plaintiff was an independent transaction, then the indorser could have recorded the mortgage while in his hands. He is, then, as blamable as the plaintiff, and should not be discharged.

WILLS — CONSTRUCTION — GIFT TO A CLASS. — A will read, "I give the residue of my estate to my late husband's nephews and nieces, as follows: to A, B, C, D, and E, to be equally divided between them, share and share alike." Three of these legatees predeceased the testatrix. *Held*, that their shares should go intestate. *In re Deming's Will*, 174 N. Y. Supp. 172.

In the construction of wills there is a general presumption against intestacy. *Meiners* v. *Meiners*, 179 Mo. 614, 78 S. W. 795. This is especially true where there is a residuary clause, because it shows the testator meant to dispose of all his property by will. *Welsh* v. *Gist*, 101 Md. 606, 61 Atl. 665. Neverthe-

less, it is well settled that a lapsed part of the residuary estate will not go to the other residuary legatees, but to the next of kin. *Canfield* v. *Canfield*, 62 N. J. Eq. 578, 50 Atl. 471. If, however, the gift is to a class, on the death of one, the survivors take the whole. *Dresel* v. *King*, 198 Mass. 546, 85 N. E. 77. Usually, a gift to a group consisting of persons connected by some common tie, as "to all my nephews and nieces," is *prima facie* a gift to a class. *Kingsbury* v. *Walter*, [1901] App. Cas. 187. This presumption is strengthened in the principal case by the fact that the beneficiaries are grouped as residuary legatees. *Smith* v. *Haynes*, 202 Mass. 531, 89 N. E. 158. But where the beneficiaries are named, though they may constitute a class, it is generally held the gift is to the individuals distributively. *Dildine* v. *Dildine*, 32 N. J. Eq. 78; *Sharpless's Estate*, 214 Pa. St. 335, 63 Atl. 884. The words "share and share alike" also tend to indicate an intention to have an individual distribution. *Moffet* v. *Elmendorf*, 152 N. Y. 475, 46 N. E. 845. Balancing these considerations, and with regard to the rest of the will, the court in the present case might well have found as it did.

BOOK REVIEWS

THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW. By Gerard Carl Henderson, A.B., LL.B. Cambridge University Press. 1918.

Mr. Henderson's essay will with English lawyers excite at once amazement and admiration. Their wonder will be caused by the subject with which the book deals. Most Englishmen have somehow become so accustomed to the existence of corporate bodies, whether English or foreign, that they no more think of any necessity for explaining or defining the nature of a corporation than of the need for a lawyer, at any rate, making up his mind what is the proper definition of a human being, any more than for settling how far soul and body are united together, and whether the soul can exist without a bodily form. To the ordinary barrister or solicitor in England these inquiries lie outside his professional interests; some of them are questions which deserve the attention of clergymen; others are the study belonging to philosophers or metaphysicians. It will come as startling news to our practicing lawyers, to our leading solicitors, and, even one suspects, to a good number of our judges, to learn that the question, whether a corporation, *e. g.*, the London and Northwestern Railway Company, is the creation of a legal fiction, or is as much an actual being as any living man or woman, occupies the attention not only of German jurists but also of the lawyers and the courts of the United States. No Englishman is surprised that any German should muddle his head over a futile controversy, for we all know that the Germans of today, and above all German professors, always think wrongly, and act wrongly. But English lawyers and judges are many of them astounded that the citizens of the United States, where, as we are inclined to believe, uprightness and good sense are as much developed as in England, should trouble themselves with futile controversies of what is popularly called a scholastic character. Difficult as it may be for leading English barristers fully occupied in the lucrative practice of that lucid misrepresentation which wins the verdicts of juries, and occasionally perverts the judgments of courts, to believe that speculations about the nature of corporate existence occupy in the United States, and have occupied for many years, the thoughts of successful lawyers and of some very distinguished judges, it is quite certain that questions as to the nature of corporate personality are constantly discussed, not only by the Law